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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/632,129

07/31/2003

Douglas J. Habing

3/1130US

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SUITE 2000

ST LOUIS, MO 63102

EXAMINER

RICHMAN, GLENN E

ART UNIT

PAPER NUMBER

3764

MAIL DATE

DELIVERY MODE

06/15/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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**Office Action Summary**

Application No.

10/632,129

Applicant(s)

HABING, DOUGLAS J.

Examiner

Glenn Richman

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3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 34-57 is/are pending in the application.
- 4a) Of the above claim(s) 57 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 34-56 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

Newly submitted claim 57 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Different species

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 56 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 34-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weber et al in view of Simonson.

Weber et al disclose a frame (52); a resistance object (54); a first arm moveably attached to said frame at a first pivot point such that said arm traverses a fixed path about a first axis permitted by said first pivot point (20, left), said first arm also being connected to said resistance object (fig. 1); a second arm moveably attached to said frame at a second pivot point such that said arm traverses a fixed path about a second

axis permitted by said second pivot point, said second arm also being connected to said resistance object (fig. 1); and at least two handle locations on each of said arms (22).

Weber et al do not disclose said first axis and said second axis are not parallel to each other.

Simonson discloses a first axis and second axis are that are not parallel to each other (fig. 2).

It would have been obvious to use Simonson's pivot points with Weber et al's frame, as it is well known as taught by Simonson to use non parallel pivots point to provide a method of converging exercise.

Weber et al further disclose wherein a user can manipulate a handle located at one of said handle locations on each of said arms to perform a converging exercise resisted by said resistance object; and wherein said user can manipulate a handle located at another of said handle locations on each of said arms to perform a diverging exercise resisted by said resistance object (fig. 1), said converging exercise comprises a push- type exercise (col. 9, lines 19-31), said converging exercise comprises a pull-type exercise (col. 9, lines 19-31), said handle at said handle location and said handle at said another handle location comprise the same handle moved between the two locations (fig. 1), said handle at said handle location and said handle at said another handle location comprise different handles (fig. 1), the movement of said handle at said handle location causes movement of said handle at said another handle location (col. 9, lines 19-31), said first arm and said second arm each move independently of the other (col. 9, lines 19-31), said first arm and said second arm move dependently (col. 9, lines

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19-31), first arm and said second arm each move rotationally (fig. 1), said first arm rotates about a first axis of rotation and said second arm rotates about a second axis of rotation different from the first axis of rotation (abstract), said first axis of rotation and said second axis of rotation are not parallel (col. 3, lines 13-26), a handle located at a first handle position traces a first arc when moved (col. 5, lines 20-31), said first arc converging to a reference plane; wherein a handle located at a second handle position traces a second arc when moved, said second arc diverging from said reference plane; and wherein said handle located at said first handle position and said handle located at said second handle position each obtain resistance from said resistance object in the same direction (fig. 4).

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

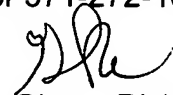
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Glenn Richman whose telephone number is 571-272-4981. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Glenn Richman  
Primary Examiner  
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